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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: DEC 18 2006

EAC 03 192 50042

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for the classification sought, but found that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submitted a personal statement, his thesis and a letter from his current employer. The petitioner also requests oral argument to demonstrate that he "fits a particular profile that American workers do not have." The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. 103.3(b). We are satisfied that the written record of proceeding fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

For the reasons discussed below, the petitioner has not demonstrated his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's degree in Defense and Strategic Studies from Southwest Missouri State University in May 2001. The petitioner's current occupation, research analyst, falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner, who claims fluency in Arabic dialects and French, seeks to work in an area of intrinsic merit, intelligence gathering, translating or analysis. The petitioner submits considerable documentation adequately documenting the shortage of Arab translators and human intelligence

from the Middle East. We are satisfied that the proposed benefits of his work, improved intelligence from the Middle East, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do *not* accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Citizenship and Immigration Services (CIS) acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for an alien employment certification. In the instant matter, the petitioner proposes to work in positions that require U.S. citizenship or, in the case of the military, lawful permanent resident status. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of an alien employment certification cannot be viewed as sufficient cause for a national interest waiver. *Id.* at 218, n. 5.

As stated above, the petitioner has a Master's degree in Defense and Strategic studies and he also indicates that he is fluent in Arabic dialects and French. The petitioner initially asserted that he attempted to join the U.S. Marine Corps and the U.S. Navy, but was unable to do so because he was not a permanent resident. The petitioner also indicates that he interviewed with the Defense Intelligence Agency and the Federal Bureau of Investigation (FBI), and was also turned down because he was not a United States citizen. The petitioner did not submit any confirmation of this interest from the Department of Defense or the FBI. No high-level official (or even a lower level representative) from either entity has issued a letter in support of this petition. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner relies on letters from his employers and former professors as evidence. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International,* 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795;

See also Matter of Soffici, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The letters attest to the petitioner's skills in general terms. They do not identify specific achievements that have influenced the field of strategic studies. It cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221.

The petitioner's only experience in his proposed field has been as a student. Academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n.6. While the petitioner has submitted his thesis and asserts that it is available to the public, he has not demonstrated that it has been influential in the field. For example, the record lacks evidence that his thesis has been cited or relied upon in policy reports.

The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all multilingual aliens providing services to the government. It is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217. In the instant matter, the petitioner's proposed work for the U.S. military or government at some distant point in the future is contingent not only on his immigration status but passing qualifying examinations and background clearances. In a 2005 article by InterPress submitted by the petitioner, the FBI indicated that it had processed 30,000 applicants for linguists in Arabic and that "out of 20 applicants, we'd be lucky to get one or two." Thus, the proposed benefits are too far in the future and speculative to serve as the basis for a waiver of the alien employment certification.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.